Derek P. Cole
dcole@colehuber.com

REPLY TO:
☑ ROSEVILLE ☐ ONTARIO

September 22, 2020

VIA ELECTRONIC SERVICE AND U.S. MAIL

The Honorable Tani Cantil-Sakauye, Chief Justice
and Honorable Associate Justices
Supreme Court of the State of California
350 McCallister Street
San Francisco, CA 94102-3600

Re: *City of Santa Monica v. Pico Neighborhood Association et al.*
California Supreme Court Case No. S263972
Opposition to Petition for Review

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

The League of California Cities ("League") and California Special Districts Association ("CSDA") provide this letter as amici curiae in support of Respondent City of Santa Monica ("City"). These amici request this Court decline to accept review of this case.

Introduction

As the League and CSDA explain, the Plaintiffs have failed to accurately represent the Second District Court of Appeal's decision below. The Court of Appeal did not hold that a California Voting Rights Act ("CVRA") plaintiff must demonstrate a protected class could form a "majority-minority" district as a condition for compelling a local agency to convert to a district-based election system. The court, rather, engaged in a traditional analysis of the CVRA's text to hold that vote dilution is a required element of a plaintiff's claim. Subsequently, in the analysis of whether the Plaintiffs had met their burden of proof on that element, the Court of Appeal did not issue any categorical ruling about the statistical threshold necessary to establish vote dilution. It simply held that the Plaintiffs' evidence was insufficient to establish their claim.

Below, the Court of Appeal squarely resolved the statutory interpretation issues it considered. This case does not present any novel issue, split in authority, or other compelling need for review in this Court.

Interest of the Amici Curiae

The League is an association of 476 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
3401 Centrelake Dr., Suite 670
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.937.2034

Committee, which is composed of 24 city attorneys representing all regions of the State. The committee monitors appellate litigation affecting municipalities and identifies those cases, such as the instant matter, that are of statewide significance.

CSDA is a California non-profit corporation consisting of over 900 special district members throughout California that was formed in 1969 to promote good governance and improved core local services through professional development, advocacy, and other services for all types of independent special districts. These special districts provide a wide variety of public services to urban, suburban and rural communities, including water supply, treatment and distribution, sewage collection and treatment, fire suppression and emergency medical services, recreation and parks, security and police protection, solid waste collection, transfer, recycling and disposal, library, cemetery, mosquito and vector control, road construction and maintenance, pest control and animal control services, and harbor and port services. CSDA is advised by its Legal Advisory Working Group, comprised of attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA had identified this case as having statewide significance for special districts.

The League and CSDA represent members whose councils and governing boards are elected through at-large and district elections. Both methods of election can provide for effective and democratic local governance. Neither the CVRA nor any other California statute prefers one method of elections. (*See Thornburgh v. Gingles* (1986) 478 U.S. 30, 48 ["Multimember districts and at-large election schemes … are not per se violative of minority voters' rights."]) The CVRA recognizes, rather, that at-large elections can in certain circumstances dilute the relative voting power of protected classes to elect the candidates they prefer. (Elec. Code, § 14027.) In those situations, the CVRA provides for the conversion to district elections as the usual means of ensuring that the election system does not deprive a protected class of its ability to elect the candidates that class prefers. (*Id*., § 14029.)

Below, the League and CSDA submitted an amicus brief to the Court of Appeal to express their support for the City's appeal. They did so to seek clarity regarding interpretation of important CVRA provisions. As they explained, numerous League and CSDA members have followed the procedures of the CVRA and Elections Code in converting their at-large elections to district elections. The amici noted that in explaining their decisions to convert, city and district officials had often expressed concern about the significant attorney fees that could be awarded in CVRA litigation. In some instances, city and district officials had stated a preference for retaining at-large systems and a belief that their at-large systems did not dilute protected-class voting strength. But they felt compelled to change—even when they did not believe their voting systems violated the CVRA—because of uncertainties as to the CVRA's interpretation coupled with the potentially large exposure to attorney fees.

The League and CSDA believe the Court of Appeal's decision provides important clarity to local public agencies. Importantly, the court confirms that vote dilution is a required element of a CVRA plaintiff's claim. This ruling clarifies there are two elements of proof of CVRA

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
3401 Centrelake Dr., Suite 670
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.937.2034

liability—racially polarized voting *and* vote dilution. Hereafter, cities and special districts that receive CVRA demands will have the benefit of knowing both elements must be proven to compel their conversion to district elections.

With this understanding, the League and CSDA provide this letter out of concern the Plaintiffs have distorted the clarity provided by the Court of Appeal's decision. At oral argument below, the Plaintiffs appeared to have abandoned the position that vote dilution is not an element of a CVRA claim. In attempting to fashion a ground for review by this Court, the Plaintiffs now attempt to recast the Court of Appeal decision as having imposed a bright-line rule as to how dilution must be demonstrated—through proof of the potential for creation of a "majority-minority" district"—that the Federal Voting Rights Act requires, but the CVRA does not.

Because this is not a fair or accurate reading of the Court of Appeal decision, the League and CSDA write to request that this Court decline to accept review. Simply put, this case does not present the issue the Plaintiffs claim it does.

This Court Should Decline to Accept Review

The Plaintiffs request this Court accept review on the false premise the Court of Appeal required them to show that the protected class at issue could form a "majority-minority" city-council district. The Plaintiffs correctly note the CVRA, unlike its federal counterpart, expressly dispenses with this requirement as an element of proof of liability. (Elec. Code, § 14028(c).) But they wrongly assert the Court of Appeal required them to make such a showing in contravention of this provision of the CVRA.

To the contrary, the Court of Appeal's holding was properly informed by the CVRA's plain language. The court reached this conclusion based on several CVRA sections. It began by noting the connection between Elections Code sections 14027 and 14028(a). The former states that at-large voting violates the act when it "impairs the ability of a protected class to elect candidates of its choice or influence the outcome of an election, as a result of the *dilution* or the abridgement of the rights of voters who are members of the protected class…." (Elec. Code, § 14027, emphasis added.) The latter provides that "[a] violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body …. or in elections incorporating other electoral choices …."

The court next noted that in three sections, the CVRA refers to a plaintiff's obligation to prove violation of "section 14027 *and* 14028." (*Id*., §§ 14029, 14030, 14032, emphasis added.) Because of the conjunctive constructions in all three of these sections, the court construed section 14027's reference to "dilution" to be a separate element from section 14028's reference to "racially polarized voting."

In so construing the CVRA, the Court engaged in a straightforward, textual analysis. The court followed the directive of this Court to focus on the CVRA's plain language. See, e.g., *Tuolumne Jobs & Small Bus. Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039.) The Court

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
3401 Centrelake Dr., Suite 670
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.937.2034

of Appeal did not—nor did it need to—apply established rules of statutory construction in a new, novel, or unique way.

Nonetheless, the Plaintiffs assert that in analyzing whether they had met their burden to prove vote dilution, the Court of Appeal required them to demonstrate that Latinos in the City could form a "majority-minority" district were a district-election system implemented. The court did no such thing.

Evaluating the Plaintiffs' evidence in the underlying matter, the Court of Appeal found the protected class would only constitute 30% of one city-council district in the district-election system the Plaintiffs proposed. Compared to the 14% population of the class citywide, the court found this increase too small to meaningfully change the results of City elections. As the court noted, "[t]he result with one voting system is the same as the result with the other: no representation." (Court of Appeal, Op., p. 31.) The problem, the court observed, was that the protected class would achieve only a "marginal" increase in voting power from the creation of a district-election system. (*Id*., p. 37.) This, it observed, would not lead to "what counts in a democracy: electoral results." (*Ibid*.)

Thus, contrary to the Plaintiffs' assertion, the Court of Appeal issued no categorical rule about the threshold of evidence necessary to prove vote dilution. On the record before it, the evidence established that protected class voting power would increase from 14% to 30% in one district if district elections were implemented. Far from issuing any bright-line rule, the court held only that such a marginal increase was not sufficient to prove vote dilution. The court expressly noted that it was not deciding questions about other factual situations, such as when a protected class constitutes a "near majority of minority voters." (*Ibid*.)

In sum, the Plaintiffs have misstated the Court of Appeal's holding in their effort to fashion an issue suitable for review. The court did not impose any bright-line rule obligating CVRA plaintiffs to prove a "majority-minority" district could be created. The court held only that vote dilution is an element of proof of CVRA liability and that the Plaintiffs had not met their burden on that element. These holdings do not present they type of exceptional issues deserving of this Court's review.

Conclusion

For the reasons described above, the League and CSDA respectfully request this Court decline to accept review in this case.

//

//

//

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
3401 Centrelake Dr., Suite 670
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.937.2034

Sincerely,

Derek P. Cole
COLE HUBER LLP

cc: All Parties (by Electronic Service and U.S. Mail)
League of California Cities
California Special Districts Association

Northern California:
2281 Lava Ridge Court, Suite 300
Roseville, CA 95661
Phone: 916.780.9009
Fax: 916.780.9050

Southern California:
3401 Centrelake Dr., Suite 670
Ontario, CA 91761
Phone: 909.230.4209
Fax: 909.937.2034

PROOF OF SERVICE

City of Santa Monica v. Pico Neighborhood Assoc., et al.
California Supreme Court Case No. S263972

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Placer, State of California. My business address is 2281 Lava Ridge Court, Suite 300, Roseville, CA 95661.

On September 22, 2020, I served true copies of the following document(s) described as

OPPOSITION TO PETITION FOR REVIEW

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Cole Huber LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Roseville, California.

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2020, at Roseville, California.

/s/ Kirsten Morris
Kirsten Morris

SERVICE LIST
City of Santa Monica v. Pico Neighborhood Assoc., et al.
California Supreme Court Case No. S263972

Morris J. Baller, Of Counsel
Laura L. Ho, Esq.
Anne P. Bellows, Esq.
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417
Email: mballer@gbdhlegal.com
lho@gbdhlegal.com
abellows@gbdhlegal.com

Kevin I. Shenkman, Esq.
Mary R. Hughes, Esq.
Andrea A. Alarcon, Esq.
SHENKMAN & HUGHES
28905 Wright Road
Malibu, CA 90265
Tel: (310) 457-0970
Email: kshenkman@shenkmanhughes.com
mrhughes@shenkmanhughes.com
aalarcon@shenkmanhughes.com

Robert Rubin, Esq.
LAW OFFICE OF ROBERT RUBIN
237 Princeton Avenue
Mill Valley, CA 94941-4133
Tel: (415) 298-4857
Email: robertrubinsf@gmail.com

R. Rex Parris, Esq.
Ellery S. Gordon, Esq.
PARRIS LAW FIRM
43364 10th Street West
Lancaster, CA 93534
Tel: (661) 949-2595

Milton C. Grimes, Esq.
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, CA 90043
Tel: (323) 295-3023

Attorneys for Plaintiffs/Respondents
PICO NEIGHBORHOOD ASSOCIATION, et al.

SERVICE LIST (Continued)
City of Santa Monica v. Pico Neighborhood Assoc., et al.
California Supreme Court Case No. S263972

George Cardona, Interim City Attorney
CITY OF SANTA MONICA
1685 Main Street, Room 310
Santa Monica, CA 90401
Fax: George.Cardona@smgov.net

Attorneys for Defendant/Appellant
CITY OF SANTA MONICA

Theodore J. Boutrous Jr., Esq.
Marcellus A. Mcrae Esq.
Kahn A. Scolnick, Esq.
Tiaunia N. Henry, Esq.
Daniel R. Adler, Esq.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Fax: TBoutrous@gibsondunn.com
MMcrae@gibsondunn.com
KScolnick@gibsondunn.com
THenry@gibsondunn.com
DAdler@gibsondunn.com

Trial Court
Hon. Yvette M. Palazuelos
LOS ANGELES SUPERIOR COURT
312 North Spring Street
Los Angeles, CA 90012
Fax: sscdept9@lacourt.org

Supreme Court
350 McAllister Street
San Francisco, CA 94102